

Stephen C. McArthur (State Bar No. 277712)  
stephen@smcarthurlaw.com  
Valerie McConnell (State Bar No. 274159)  
valerie@smcarthurlaw.com  
THE MCARTHUR LAW FIRM PC  
400 Corporate Pointe, 3<sup>rd</sup> Floor  
Culver City, CA 90230  
Telephone: (323) 639-4455

Attorneys for Plaintiff and Counterdefendant,  
Mike Sarieddine

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

MIKE SARIEDDINE, an individual,  
Plaintiff,

v.

D&A Distribution, LLC (dba Strictly E-  
Cig), a Georgia limited liability  
company et al.,  
Defendants.

Shenzhen Technology Co., Ltd. (f/k/a  
Shenzhen Smok Technology Co., Ltd.),  
a Chinese corporation et al.,

Counterclaimants,

v.

MIKE SARIEDDINE, an individual,  
Counter-Defendant.

Case No. 2:17-cv-02390-DSF-SK

**[PROPOSED] ORDER TO  
STIPULATED PROTECTIVE  
ORDER**

Having considered the parties' pleadings on file to date, and the parties' jointly submitted Stipulated Protective Order to govern the handling of information and materials produced in the course of discovery, or filed with the Court in this action, the Court determines as follows:

1 1. INTRODUCTION:

2 1.1 PURPOSES AND LIMITATIONS. Discovery in this action is likely to  
3 involve production of confidential, proprietary, or private information for which  
4 special protection from public disclosure and from use for any purpose other than  
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby  
6 stipulate to and petition the Court to enter the following Stipulated Protective Order.  
7 The parties acknowledge that this Order does not confer blanket protections on all  
8 disclosures or responses to discovery and that the protection it affords from public  
9 disclosure and use extends only to the limited information or items that are entitled  
10 to confidential treatment under the applicable legal principles. The parties further  
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective  
12 Order does not entitle them to file confidential information under seal; Civil Local  
13 Rule 79-5 sets forth the procedures that must be followed and the standards that will  
14 be applied when a party seeks permission from the Court to file material under seal.

15 1.2 GOOD CAUSE STATEMENT. This is an action for trademark  
16 infringement, unfair competition, and breach of contract. The information disclosed  
17 in discovery may be sensitive and may include, without limitation, revenue, profits,  
18 costs, trade secrets, marketing, and sales forecasts. Accordingly, the parties believe  
19 that the designation of certain materials as Confidential Information or Attorneys'  
20 Eyes-Only Information is necessary because there is significant risk in disclosing  
21 certain highly sensitive information beyond the purposes of this litigation. Any of the  
22 parties could be irreparably harmed if designated Confidential Information and  
23 Attorneys' Eyes-Only Information is divulged or somehow wrongly misused by the  
24 Parties or non-parties. The unfettered disclosure of the information, including but not  
25 limited to the filing of the documents in the public record, could be harmful to the  
26 commercial interests of the Parties. There is good cause to enter this Protective Order  
27 to ensure adequate protection against the wrongful use or disclosure of protected  
28 material, and to protect the value associated with the protected material. Any  
violation of the confidentiality obligations set forth in this Protective Order could be

1 detrimental and prejudicial to one or more Parties. The Parties agree that the concerns  
2 set forth in this paragraph are asserted in good faith.

3 2. DEFINITIONS

4 2.1 Action: Saredidine v. D&A Distribution, LLC, et al., Case No. 2:17-cv-  
5 989-DSF-MRW

6 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
7 of information or items under this Order.

8 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
9 how it is generated, stored or maintained) or tangible things that qualify for  
10 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
11 the Good Cause Statement.

12 2.4 “ATTORNEYS’ EYES ONLY” Information or Items: a subset of  
13 Confidential Information that a party in good faith believes is entitled to heightened  
14 protection in order to protect economic, competitive, or sensitive personal  
15 information.

16 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as their  
17 support staff).

18 2.6 Designating Party: a Party or Non-Party that designates information or  
19 items that it produces in disclosures or in responses to discovery as  
20 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

21 2.7 Disclosure or Discovery Material: all items or information, regardless of  
22 the medium or manner in which it is generated, stored, or maintained (including,  
23 among other things, testimony, transcripts, and tangible things), that are produced  
24 or generated in disclosures or responses to discovery in this matter.

25 2.8 Expert: a person with specialized knowledge or experience in a matter  
26 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
27 an expert witness or as a consultant in this Action.

1           2.9 House Counsel: attorneys who are employees of a party to this Action.  
2 House Counsel does not include Outside Counsel of Record or any other outside  
3 counsel.

4           2.10 Non-Party: any natural person, partnership, corporation, association, or  
5 other legal entity not named as a Party to this action.

6           2.11 Outside Counsel of Record: attorneys who are not employees of a party  
7 to this Action but are retained to represent or advise a party to this Action and have  
8 appeared in this Action on behalf of that party or are affiliated with a law firm  
9 which has appeared on behalf of that party, and includes support staff.

10          2.12 Party: any party to this Action, including all of its officers, directors,  
11 employees, consultants, retained experts, and Outside Counsel of Record (and their  
12 support staffs).

13          2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
14 Discovery Material in this Action.

15          2.14 Professional Vendors: persons or entities that provide litigation support  
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
18 and their employees and subcontractors.

19          2.15 Protected Material: any Disclosure or Discovery Material that is  
20 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

21          2.16 Receiving Party: a Party that receives Disclosure or Discovery Material  
22 from a Producing Party.

### 23 3. SCOPE

24          The protections conferred by this Stipulation and Order cover not only  
25 Protected Material (as defined above), but also (1) any information copied or  
26 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
27 compilations of Protected Material; and (3) any testimony, conversations, or  
28 presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial will be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

#### 4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order will remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition will be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

#### 5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under this Order. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

1           5.2 Manner and Timing of Designations. Except as otherwise provided in this  
2 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
4 under this Order should be clearly so designated before the material is disclosed or  
5 produced.

6           Designation in conformity with this Order requires:

7           (a) for information in documentary form (e.g., paper or electronic documents,  
8 but excluding transcripts of depositions or other pretrial or trial proceedings), that  
9 the Producing Party affix at a minimum, the legend “CONFIDENTIAL”  
10 (hereinafter “CONFIDENTIAL legend”) “ATTORNEYS’ EYES ONLY”  
11 (hereinafter “AEO legend”), to each page that contains protected material.

12           A Party or Non-Party that makes original documents available for inspection  
13 need not designate them for protection until after the inspecting Party has indicated  
14 which documents it would like copied and produced. During the inspection and  
15 before the designation, all of the material made available for inspection will be  
16 deemed “ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified  
17 the documents it wants copied and produced, the Producing Party must determine  
18 which documents, or portions thereof, qualify for protection under this Order. Then,  
19 before producing the specified documents, the Producing Party must affix EITHER  
20 the “CONFIDENTIAL legend” or the “AEO legend” to each page that contains  
21 Protected Material.

22           (b) for testimony given in depositions that the Designating Party identify the  
23 Disclosure or Discovery Material on the record, before the close of the deposition  
24 all protected testimony or within ten (10) days of receipt of the transcript.

25           (c) for information produced in some form other than documentary and for  
26 any other tangible items, that the Producing Party affix in a prominent place on the  
27 exterior of the container or containers in which the information is stored the legend  
28 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

1           5.3 Inadvertent Failures to Designate. If corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the  
3 Designating Party's right to secure protection under this Order for such material.  
4 Upon correction of a designation, the Receiving Party must make reasonable efforts  
5 to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7           6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
8 designation of confidentiality at any time that is consistent with the Court's  
9 Scheduling Order.

10          6.2 Meet and Confer. The Challenging Party will initiate the dispute  
11 resolution process (and, if necessary, file a discovery motion) under Local Rule  
12 37.1 et seq.

13          6.3 The burden of persuasion in any such challenge proceeding will be on the  
14 Designating Party. Frivolous challenges made for an improper purpose (*e.g.*, to  
15 harass or impose unnecessary expenses and burdens on other parties) may expose  
16 the Challenging Party to sanctions. Unless the Designating Party has waived or  
17 withdrawn the confidentiality designation, all parties will continue to afford the  
18 material in question the level of protection to which it is entitled under the  
19 Producing Party's designation until the Court rules on the challenge.

## 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21          7.1 Basic Principles. A Receiving Party may use Protected Material that is  
22 disclosed or produced by another Party or by a Non-Party in connection with this  
23 Action only for prosecuting, defending, or attempting to settle this Action. Such  
24 Protected Material may be disclosed only to the categories of persons and under the  
25 conditions described in this Order. When the Action has been terminated, a  
26 Receiving Party must comply with the provisions of section 13 below (FINAL  
27 DISPOSITION). Protected Material must be stored and maintained by a Receiving  
28

1 Party at a location and in a secure manner that ensures that access is limited to the  
2 persons authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items.

4 Unless otherwise ordered by the Court or permitted in writing by the  
5 Designating Party, a Receiving Party may disclose any information or item  
6 designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as  
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
9 disclose the information for this Action;

10 (b) the officers, directors, and employees (including House Counsel) of the  
11 Receiving Party to whom disclosure is reasonably necessary for this Action;

12 (c) Experts (as defined in this Order) of the Receiving Party to whom  
13 disclosure is reasonably necessary for this Action and who have signed the  
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the Court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and Professional  
18 Vendors to whom disclosure is reasonably necessary for this Action and who have  
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (g) the author or recipient of a document containing the information or a  
21 custodian or other person who otherwise possessed or knew the information;

22 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
23 Action to whom disclosure is reasonably necessary provided they  
24 will not be permitted to keep any confidential information unless they sign the  
25 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
26 agreed by the Designating Party or ordered by the Court. Pages of transcribed  
27 deposition testimony or exhibits to depositions that reveal Protected Material may  
28



1 be separately bound by the court reporter and may not be disclosed to anyone  
2 except as permitted under this Stipulated Protective Order; and  
3 (i) any mediator or settlement officer, and their supporting personnel, mutually  
4 agreed upon by any of the parties engaged in settlement discussions.

### 5 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.

6 Unless otherwise ordered by the Court or permitted in writing by the  
7 Designating Party, a Receiving Party may disclose any information or item  
8 designated as “ATTORNEYS’ EYES ONLY” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as  
10 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
11 disclose the information for this Action;

12 (b) Experts (as defined in this Order) of the Receiving Party to whom  
13 disclosure is reasonably necessary for this Action and who have signed the  
14 “Acknowledgement and Agreement to be Bound” (Exhibit A);

15 (c) the Court and its personnel; and

16 (d) court reporters and their staff.

## 17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN 18 OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation  
20 that compels disclosure of any information or items designated in this Action as  
21 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” that Party must:

22 (a) promptly notify in writing the Designating Party. Such notification will  
23 include a copy of the subpoena or court order;

24 (b) promptly notify in writing the party who caused the subpoena or order to  
25 issue in the other litigation that some or all of the material covered by the subpoena  
26 or order is subject to this Protective Order. Such notification will include a copy of  
27 this Stipulated Protective Order; and  
28

1 (c) cooperate with respect to all reasonable procedures sought to be pursued  
2 by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with  
4 the subpoena or court order will not produce any information designated in this  
5 action as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” before a  
6 determination by the court from which the subpoena or order issued, unless the  
7 Party has obtained the Designating Party’s permission. The Designating Party will  
8 bear the burden and expense of seeking protection in that court of its confidential  
9 material and nothing in these provisions should be construed as authorizing or  
10 encouraging a Receiving Party in this Action to disobey a lawful directive from  
11 another court.

12 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
13 IN THIS LITIGATION

14 (a) The terms of this Order are applicable to information produced by a Non-  
15 Party in this Action and designated as “CONFIDENTIAL” or “ATTORNEYS’  
16 EYES ONLY.” Such information produced by Non-Parties in connection with this  
17 litigation is protected by the remedies and relief provided by this Order. Nothing in  
18 these provisions should be construed as prohibiting a Non-Party from seeking  
19 additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to  
21 produce a Non-Party’s confidential information in its possession, and the Party is  
22 subject to an agreement with the Non-Party not to produce the Non-Party’s  
23 confidential information, then the Party will:

24 (1) promptly notify in writing the Requesting Party and the Non-Party that  
25 some or all of the information requested is subject to a confidentiality agreement  
26 with a Non-Party;  
27  
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1 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
2 Order in this Action, the relevant discovery request(s), and a reasonably specific  
3 description of the information requested; and

4 (3) make the information requested available for inspection by the Non-Party,  
5 if requested.

6 (c) If the Non-Party fails to seek a protective order from this court within 14  
7 days of receiving the notice and accompanying information, the Receiving Party  
8 may produce the Non-Party's confidential information responsive to the discovery  
9 request. If the Non-Party timely seeks a protective order, the Receiving Party will  
10 not produce any information in its possession or control that is subject to the  
11 confidentiality agreement with the Non-Party before a determination by the court.  
12 Absent a court order to the contrary, the Non-Party will bear the burden and  
13 expense of seeking protection in this court of its Protected Material.

#### 14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
16 Protected Material to any person or in any circumstance not authorized under this  
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
18 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
19 to retrieve all unauthorized copies of the Protected Material, (c) inform the person  
20 or persons to whom unauthorized disclosures were made of all the terms of this  
21 Order, and (d) request such person or persons to execute the "Acknowledgment and  
22 Agreement to Be Bound" that is attached hereto as Exhibit A.

#### 23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 24 PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain  
26 inadvertently produced material is subject to a claim of privilege or other  
27 protection, the obligations of the Receiving Parties are those set forth in Federal  
28 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify the

1 procedure established in the Joint Report (Dkt. 145) that provides for production  
2 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e),  
3 insofar as the parties have reached an agreement on the effect of disclosure of a  
4 communication or information covered by the attorney-client privilege or work  
5 product protection, the parties hereby incorporate their agreement in this Stipulated  
6 Protective Order.

## 7 12. MISCELLANEOUS

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
11 Protective Order no Party waives any right it otherwise would have to object to  
12 disclosing or producing any information or item on any ground not addressed in this  
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. A Party that seeks to file under seal any  
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
17 may only be filed under seal pursuant to a court order authorizing the sealing of the  
18 specific Protected Material at issue.

## 19 13. FINAL DISPOSITION

20 After the final disposition of this Action, as defined in paragraph 4, within 60  
21 days of a written request by the Designating Party, each Receiving Party must  
22 return all Protected Material to the Producing Party or destroy such material. As  
23 used in this subdivision, “all Protected Material” includes all copies, abstracts,  
24 compilations, summaries, and any other format reproducing or capturing any of the  
25 Protected Material. Whether the Protected Material is returned or destroyed, the  
26 Receiving Party must submit a written certification to the Producing Party (and, if  
27 not the same person or entity, to the Designating Party) by the 60 day deadline that  
28 (1) identifies (by category, where appropriate) all the Protected Material that was

1 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
2 copies, abstracts, compilations, summaries or any other format reproducing or  
3 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
4 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
5 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
6 and trial exhibits, expert reports, attorney work product, and consultant and expert  
7 work product, even if such materials contain Protected Material. Any such archival  
8 copies that contain or constitute Protected Material remain subject to this Protective  
9 Order as set forth in Section 4 (DURATION).

10 14. Any willful violation of this Order may be punished by civil or criminal  
11 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary  
12 authorities, or other appropriate action at the discretion of the Court.

13  
14 **IT IS SO ORDERED.**

15  
16  
17 DATED: November 13, 2017



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HON. STEVE KIM  
United States Magistrate Judge

EXHIBIT A  
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ **[full name]**, of \_\_\_\_\_  
**[full address]**, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of Sarieddine v. D&A Distribution, LLC, et al., Case No. 2:17-cv-989-DSF-MRW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint \_\_\_\_\_ **[full name]** of \_\_\_\_\_ **[full address and telephone number]** as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

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Executed on November 9, 2017, at Los Angeles, California.

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Valerie McConnell